

FIRST REGULAR SESSION

# HOUSE BILL NO. 213

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ALFERMAN.

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D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 29.200 and 393.710, RSMo, and to enact in lieu thereof three new sections relating to joint municipal utility commissions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 29.200 and 393.710, RSMo, are repealed and three new sections 2 enacted in lieu thereof, to be known as section 29.200, 29.420, and 393.710, to read as follows:

29.200. 1. Except as provided under subsection 2 of this section, all audits conducted  
2 under this chapter may be made at the discretion of the auditor without advance notice to the  
3 organization being audited. An audit also shall be conducted upon the request of the governor  
4 as provided under section 26.060, and the expenses for any such audit conducted upon the  
5 request of the governor shall be paid as provided in section 26.090.

6       2. The auditor, on his or her initiative and as often as he or she deems necessary, to the  
7 extent deemed practicable and consistent with the overall responsibility as contained in this  
8 chapter, shall make or cause to be made audits of all or any part of the activities of the state  
9 agencies.

10     3. The auditor shall make, or cause to be made, audits of all or any parts of political  
11 subdivisions and other entities as authorized in this chapter or any other law of this state.

12     4. **Beginning with the year 2016 and every two years thereafter, the auditor shall**  
13 **make or cause to be made audits of all joint municipal utility commissions created under**  
14 **the provisions of section 393.700 to 393.770. The municipal members of the joint municipal**  
15 **utility commission being audited shall jointly pay all expenses incurred in making the**  
16 **audits, including the salaries of auditors, examiners, clerks, stenographers, and other**  
17 **employees of the state auditor conducting the audit.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18       **5.** In selecting audit areas and in evaluating current audit activity, the auditor may, at his  
19 or her discretion, consider and utilize, in whole or in part, the relevant audit coverage and  
20 applicable reports of the audit staffs of the various state agencies, independent contractors, and  
21 federal agencies.

22       **[5.] 6.** The auditor shall be authorized to contract with federal audit agencies, or any  
23 governmental agency, on a cost-reimbursement basis, to perform audits of federal grant programs  
24 administered by the state departments and institutions in accordance with agreements negotiated  
25 between the auditor and the contracting federal audit agencies or any governmental agency. In  
26 instances where the grantee state agency shall subgrant such federal funds to local governments,  
27 regional councils of government, other local groups, or private or semiprivate institutions or  
28 agencies, the auditor shall have the authority to examine the books and records of these  
29 subgrantees to the extent necessary to determine eligibility and proper use in accordance with  
30 state and federal laws and regulations. The auditor shall charge and collect from the contracting  
31 federal audit agencies, or any governmental agencies, the actual cost of all the audits of the grants  
32 and programs that are conducted by the auditor under the contract. Amounts collected under  
33 these arrangements shall be deposited into the state treasury and be credited to the state  
34 auditor-federal fund and shall be available to hire sufficient personnel to perform these  
35 contracted audits and to pay for related travel, supplies, and other necessary expenses.

36       **[6.] 7.** In the auditor's reports of audits and reports of special investigations, the auditor  
37 shall make any comments, suggestions, or recommendations deemed appropriate concerning any  
38 aspect of such agency's activities and operations.

39       **[7.] 8.** The auditor shall audit the state treasury at least once annually.

40       **[8.] 9.** The auditor may examine the banking accounts and records of the state treasurer,  
41 state agency, or any political subdivision at any bank or financial institution provided that the  
42 bank or financial institution shall not be required to produce the requested accounts or records  
43 until the auditor, treasurer, state agency, or political subdivision reimburses the reasonable  
44 document production costs of the bank or financial institution.

45       **[9.] 10.** The auditor may, as often as the auditor deems necessary, conduct a detailed  
46 review of the bookkeeping and accounting systems in use in the various state agencies that are  
47 supported partially or entirely by state funds. Such examinations shall be for the purpose of  
48 evaluating the adequacy of systems in use by such agencies. In instances where the auditor  
49 determines that existing systems are outmoded, inefficient, or otherwise inadequate, the auditor  
50 shall recommend changes to the state agency and notify the general assembly of the  
51 recommended changes.

52 [10.] **11.** The auditor shall, through appropriate tests, determine the propriety of the data  
53 presented in the state comprehensive annual financial report, and shall express the auditor's  
54 opinion in accordance with generally accepted government auditing standards.

55 [11.] **12.** The auditor shall provide a report to the governor, attorney general, and other  
56 appropriate officials of facts in the auditor's possession which pertain to the apparent violation  
57 of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer  
58 or employee.

59 [12.] **13.** At the conclusion of an audit, the auditor or the auditor's designated  
60 representative shall supply a copy of a draft report of the audit to, and discuss such draft with,  
61 the official, or that official's designated representative, whose office is subject to audit. On any  
62 audit of a state agency or political subdivision of the state, the auditee shall provide responses  
63 to any recommendations contained in the draft report within thirty days from the receipt of the  
64 draft report.

65 [13.] **14.** The auditor shall notify the general assembly, the governor, the director of each  
66 agency audited, and other persons as the auditor deems appropriate that an audit report has been  
67 published, its subject and title, and the locations, including state libraries, at which the report is  
68 available. The auditor then shall distribute copies of the report only to those who request a  
69 report. The copies shall be available in written form or available on the official website of the  
70 auditor. The auditor may charge a reasonable fee for providing a written copy of an audit report.  
71 The auditor also shall file a copy of the audit report in the auditor's office[;], **and** this copy shall  
72 be a permanent public record. Nothing in this subsection shall be construed to authorize or  
73 permit the publication of information that is otherwise prohibited by law from being disclosed.

74 [14.] **15.** Nothing in this chapter shall be construed to infringe upon or deprive the  
75 legislative, executive, or judicial branches of state government of any rights, powers, or duties  
76 vested in or imposed upon them by statute or the constitution of this state.

77 [15.] **16.** Nothing in this chapter shall be construed by the courts of this state in a manner  
78 inconsistent with Article II of the Constitution of Missouri.

79 [16.] **17.** The auditor shall be responsible for receiving reports of allegations of improper  
80 governmental activities as provided in section 29.221. The auditor shall adopt policies and  
81 procedures necessary to provide for the investigation or referral of such allegations.

82 [17.] **18.** In accordance with the state's records retention schedule, the auditor shall  
83 maintain a complete file of all audit reports and reports of other examinations, investigations,  
84 surveys, and reviews issued under the auditor's authority. Audit workpapers and other evidence  
85 and related supportive material directly pertaining to the work of the auditor's office shall be  
86 retained according to an agreement between the auditor and the state archives. To promote  
87 intergovernmental cooperation and avoid unnecessary duplication of audit effort, pertinent

88 workpapers and other supportive material related to issued audit reports may be, at the discretion  
89 of the auditor and unless otherwise prohibited by law, made available for inspection by duly  
90 authorized representatives of the state and federal government who desire access to, and  
91 inspection of, such records in connection with a matter officially before them, including criminal  
92 investigations. Except as provided in this section, audit workpapers and related supportive  
93 material shall be kept confidential, including any interpretations, advisory opinions, or other  
94 information or materials used and relied on in performing the audit.

**29.420. 1. Any audit made of a joint municipal utility commission under the  
2 provisions of section 29.200 shall include a report by the auditor to the elective officers of  
3 each of the members of the joint municipal utility commission containing the results of his  
4 or her findings from an examination of appointed officers, setting out in detail the findings  
5 as to the collection and disbursement of public funds and the mode of bookkeeping and  
6 accounting in force in such commission.**

**7 2. The report of the findings of the examination of a joint municipal utility  
8 commission shall recognize the reporting standards required by the Government Auditing  
9 Standards Board for joint ventures and disclose the financial benefit or burden the  
10 activities of the joint commission may have on the resources of each of the member  
11 governments; whether the member governments are legally obligated or have otherwise  
12 assumed the obligation to finance the deficits of, or provide financial support to, the joint  
13 commission; and whether the member governments are obligated for the debt of the joint  
14 commission, and if so, the extent of that current debt. The auditor shall report in detail the  
15 extent of the assets and liabilities of any investments or other business joint ventures of the  
16 joint municipal utility commission and report how it impacts the liens upon the assets of  
17 each municipality so that the joint venture liabilities and obligations are correctly reflected  
18 in the annual audits of each municipal member of the joint municipal utility commission.**

**19 3. As soon as possible after the completion of an examination of a joint municipal  
20 utility commission, the auditor shall report in writing the findings to each of the municipal  
21 governing entities that are members of the joint municipal utility commission, setting out  
22 in detail the amount of the investments of the joint municipal utility commission and those  
23 of all affiliates, associates, and projects of the joint commission; the amounts of its  
24 authorized bonded indebtedness, and those of all affiliates, associates, and projects; the  
25 amount of its bonds and other forms of evidence of indebtedness issued and outstanding,  
26 both taxable and nontaxable; its receipts and expenditures during the preceding period;  
27 the amount paid as dividends upon its stock; interest upon its bonds; the names of its  
28 officers and the aggregate amount paid as salaries to them; the amount paid as wages to  
29 its employees; the location of its plant or plants and system, including a full description of**

30 **all properties, investments, and franchises and detailed information stating how each**  
31 **franchise and investment stated to be owned was acquired; such other facts pertaining to**  
32 **the operation and maintenance of the plan and system; and the affairs of any affiliated**  
33 **person or corporation as the auditor may deem to be in the public interest. Such reports**  
34 **shall be in the form, cover the period, and contain such recommendations as may be**  
35 **proper.**

36 **4. The auditor shall provide recommendations in his or her published report**  
37 **resulting from audits and examinations of joint municipal utility commissions as to**  
38 **legislative improvements that may be made to enhance the accountability for such joint**  
39 **commissions.**

393.710. 1. Municipalities, joint municipal utility commissions, public water supply  
2 districts, and sewer districts may, by joint contract, establish a governmental entity to be known  
3 as a joint municipal utility commission, to effect the joint development of a project or projects  
4 in whole or in part for the benefit of the inhabitants of such municipalities, public water supply  
5 districts and sewer districts.

6       2. Any joint contract establishing a commission under this section shall specify:

7           (1) The name and purpose of the commission and the functions or services to be  
8 provided by the commission;

9           (2) The establishment and organization of a governing body of a commission which shall  
10 be a board of directors in which all powers of the commission are vested. The joint contract may  
11 provide for the creation by the board of an executive committee of the board to which the powers  
12 and duties of the board may be delegated as the board or state statute shall specify;

13           (3) The number of directors, the manner of their appointment, terms of office and  
14 compensation, if any, and the procedure for filling vacancies on the board. Each contracting  
15 municipality, public water supply district, and sewer district shall have the power to appoint one  
16 member and an alternate to the board of directors and shall be entitled to remove that member  
17 and alternate at will;

18           (4) The manner of selection of the officers of the commission and their duties;

19           (5) The voting requirements for action by the board, but, unless specifically provided  
20 otherwise, a majority of directors shall constitute a quorum and a majority of the quorum shall  
21 be necessary for any action taken by the board;

22           (6) The duties of the board which shall include the obligation to comply or to cause  
23 compliance with this section and the laws of the state and, in addition, with each and every term,  
24 provision and covenant in the joint contract creating the commission on its part to be kept or  
25 performed;

26           (7) The manner in which additional municipalities, public water supply districts, and  
27 sewer districts may become parties to the joint contract;

28           (8) The manner of financing the commission and of establishing and maintaining a  
29 budget and annual audit for the commission;

30           (9) The ownership interests of the contracting municipality electric cooperative  
31 associations, municipally owned or public utilities in a project or the manner of determining such  
32 ownership interest, which ownership interest shall be subject to any mortgage of a project  
33 pursuant to section 393.735;

34           (10) Provisions for the disposition, division or distribution of any property or assets of  
35 the commission on dissolution; and

36           (11) The term of the joint contract, which may be a definite period or until rescinded or  
37 terminated, and the method, if any, by which the joint contract may be rescinded or terminated  
38 so long as the commission has no bonds outstanding, unless provision for full payment of such  
39 bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the  
40 resolution, trust indenture or security instrument securing the bonds.

41           3. A commission shall, if the joint contract so provides, be the successor to any nonprofit  
42 corporation, agency, or another entity theretofore organized by the contracting municipalities to  
43 provide the same function, service or facility, and the commission shall be entitled to all rights  
44 and privileges and shall assume all obligations and liabilities of such other entity under existing  
45 contracts to which such other entity is a party.

46           **4. Before any city of the third or fourth class may become a contracting  
47 municipality or a participating municipality under sections 393.700 to 393.770, it shall first,  
48 by ordinance, submit the proposition for such action to the voters of the city after having  
49 held at least one advertised public hearing to provide full disclosure of the proposal in  
50 question, and it shall require a majority of the votes cast to be in favor of the proposition  
51 before any authority shall exist for the city to enter into any contract or participate in such  
52 a project.**

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